

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation) Case No. D1-93-9
Against:)
) OAH No. L-1997060116
JEFFREY R. PALMER,)
) DECISION
Respondent.)
_____)

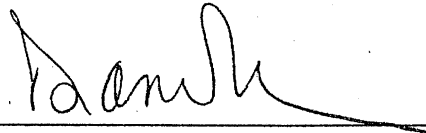
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as its decision in the above-entitled matter.

This Decision shall become effective May 1, 1998.

IT IS SO ORDERED April 1, 1998.

BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



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BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	NO. D1-93-9
and Petition to Revoke Probation)	
Against:)	OAH NO. L1997060116
)	
JEFFREY R PALMER,)	
Certified Public Accountant)	
Certificate No. CPA 34053,)	
)	
Respondent.)	
)	

PROPOSED DECISION

This matter was heard on January 14, 1998, at Los Angeles, by Jerry Mitchell, Administrative Law Judge of the State of California Office of Administrative Hearings. The complainant was represented by Michael R. Granen, Deputy Attorney General. The respondent was present and represented himself.

FACTUAL BASIS

1. The Accusation and Petition to Revoke Probation were made and filed by Carol Sigman in her official capacity as Executive Officer of the California State Board of Accountancy ("Board").
2. On or about January 29, 1982 Certified Public Accountant Certificate No. CPA 34053 was issued to Jeffrey R. Palmer ("respondent"). The certificate expired on February 1, 1995, and has not been renewed.
3. As used herein, "Section" refers to a section of the California Business and Professions Code.
4. Certificate No. CPA 34053 has been previously disciplined. In a stipulated Decision and Order in Case No. AC-933-9, which became effective July 29, 1994, the Board placed Certificate NO. CPA 34053 on probation for three years under terms and conditions which included condition numbers 12, 13, 16 and 23, to wit:

"12. respondent shall obey all federal,
California, other states' local laws,

including all published rules, relating to the practice of public accountancy in California.

"13. During the term of probation, Respondent shall conduct all of his engagements in the State of California in accordance with applicable published professional standards and SBA published rules, including, but not limited to, those applicable to the following:

- (a) compilation of financial statements;
- (b) compilation of prospective financial statements;
- (c) compilation of pro forma financial information;
- (d) conflicts of interest; and
- (e) acceptance of unlawful commissions.

"16. Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board on a form obtained from the Board.

"23. Any material failure by Respondent to comply with any of the terms of this Stipulation shall be considered an act of unprofessional conduct in violation of California Business and Professions Code Section 5100. In the event of such violation, the Board, after giving Respondent notice and an opportunity to be heard pursuant to the provisions of the Administrative Procedure Act, may revoke probation and impose such discipline as it deems appropriate, up to and including revocation of CPA No. 34053."

4. While Certificate No. CPA 34053 was on probation, respondent materially failed to comply with condition 16 of said probation in that he failed to submit quarterly reports within 10 days of completion of the quarter, for the quarters ended March 31 1995, June 30, 1995, September 30, 1995, December 31, 1995, and March 31, 1996.

5. While Certificate No. CPA 34053 was on probation, respondent materially failed to comply with conditions 12 and 13 of said probation in that, after his certificate expired on February 1 1995, he wilfully engaged in the practice of accountancy without a valid permit, in violation of Section 5050; he wilfully engaged in the practice of public accountancy without the required 80 hours of continuing education required for license renewal under Board Rule 87; he wilfully used the term "Certified Public Accountant" without a valid permit, in violation of Section 5055; and he wilfully and knowingly prepared, published and disseminated financial statements, reports or information that were false, fraudulent or materially misleading in that they were identified as being prepared by respondent as "Certified Public Accountants," when he was not licensed to practice public accountancy, in violation of Section 5100(i).

6. While Certificate No. 34053 was on probation, respondent materially failed to comply with condition 12 of the aforesaid probation in that he practiced as an individual practitioner under the plural designation "Certified Public Accountants," in violation of Board Rule 66.

7. Respondent attributes his above-described conduct to the dissolution of his marriage and to litigation.

8. The reasonable costs incurred by the Board in the investigation and prosecution of this case total \$4,071.06.

LEGAL BASIS

9. The evidence established that while Certificate No. CPA 34053 was on probation, respondent materially violated conditions 12, 13 and 16 of that probation; wherefore, the Board may, under condition 23 of that probation, revoke that probation and impose such discipline as it deems appropriate.

10. Respondent's material violations of probation conditions 12, 13, 16, and each of them, constitute unprofessional conduct under probation condition 23 and subjects Certificate No. CPA 34053 to discipline under Section 5100.

11. The evidence established that respondent wilfully violated Sections 5050, Section 5055 and Board Rule 87, which constitutes unprofessional conduct under Section 5100(f) and subjects Certificate No. CPA 34053 to discipline under Section 5100.

12. The evidence established that respondent knowingly prepared, published or disseminated false, fraudulent or materially misleading financial statements, reports, or information, which

constitutes unprofessional conduct under Section 5100(i) and subjects Certificate No. CPA 34053 to discipline under Section 5100.

13. The Board has requested the Administrative Law Judge to make an order, pursuant to Section 5107, directing respondent to pay to the Board all reasonable costs of investigation and prosecution of this case, which was found to be \$4,071.06.

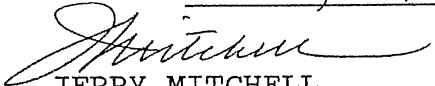
ORDER

Probation in Case No. AC-93-9 is revoked pursuant to condition 23 of that probation; and Certificate No. CPA 34053, heretofore issued to respondent Jeffrey R. Palmer, is revoked pursuant to that same condition.

Certificate No. CPA 34053 is separately revoked pursuant to Business and Professions Code section 5100.

Respondent Jeffrey R. Palmer is directed to pay \$4,071.06 to the Board of Accountancy pursuant to Business and Professions Code section 5107, as that section interacts with Business and Professions Code section 5100(i).

DATED: FEB. 4, 1998



JERRY MITCHELL
Administrative Law Judge

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5 Attorneys for Complainant

6
7 **BEFORE THE**
8 **BOARD OF ACCOUNTANCY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to) NO. D1-93-9
12 Revoke Probation Against:)

13 JEFFREY R. PALMER)
14 1631 Pontius Avenue)
15 Los Angeles, CA 90025)

16 ACCUSATION AND
17 PETITION TO
18 REVOKE PROBATION

19 Certified Public Accountant)
20 Certificate No. 34053)

21 Respondent.)
22

23 CAROL SIGMANN alleges:
24

25 1. Complainant, Carol Sigmann, is the Executive Officer of the California
26 State Board of Accountancy (hereinafter the "Board") and brings this Accusation and Petition
27 solely in her official capacity.

28 **LICENSE AND DISCIPLINARY HISTORY**

29 2. On or about January 29, 1982, Certified Public Accountant Certificate No.
30 CPA 34053 was issued by the board to Jeffrey R. Palmer (hereinafter "respondent"), and
31 thereafter said license has been in full force and effect, except that said license was
32 disciplined by the Board in its Decision and Order effective July 29, 1994, in case no. AC-
33 93-9 (hereinafter "Board's Decision), and expired on February 1, 1995. True and correct

copies of the Accusation, Stipulation for Settlement and Decision of the Board of Accountancy Regarding Jeffrey R. Palmer, are attached hereto as Exhibit A and incorporated herein as though fully set forth.

3. The Board's Decision provides that respondent's certificate is placed on probation for a period of three years, on terms and conditions which include:

(12) Respondent shall obey all federal, California, other states' and local laws, including all published rules, relating to the practice of public accountancy in California.^{1/}

(13) During the term of probation, Respondent shall conduct all of his engagements in the State of California in accordance with applicable published professional standards and SBA published rules, including, but not limited to, those applicable to the following:

(a) compilation of financial statements;

(b) compilation of prospective financial statements;

(c) compilation of pro forma financial information.

(16) Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board on a form obtained from the Board.

(23) Any material failure by Respondent to comply with any of the terms of the stipulation shall be considered an act of unprofessional conduct in violation of California Business and Professions Code Section 5100. In the event of such violation, the Board, after giving Respondent notice and an opportunity to be heard pursuant to the provisions of the Administrative Procedure Act, may revoke probation and impose such discipline as it deems appropriate, up to and including revocation of CPA No. 34053.

(24) If an accusation or petition to revoke probation is filed against Respondent during the probationary period, the Board shall have continuing jurisdiction until

1. The paragraph numbers used refer to the numbering in the stipulation (Exhibit A, Stipulation).

1 the matter is final and the period of probation shall be extended until the matter is final.

2 (25) In any subsequent proceedings by the Board against Respondent,
3 either for a material failure to comply with any of the terms of this Stipulation or for any
4 other reason, the Board, in determining the appropriate discipline, may take into account the
5 terms of this stipulation.

6 4. The Board's decision further provides that for purposes of the stipulation
7 and any future proceedings or action by or before the Board, respondent does not contest the
8 allegations of the Accusation.

9 STATUTES AND REGULATIONS

10 5. California Business and Professions Code (hereinafter "Code") Section
11 5100 provides that the Board may revoke, suspend or refuse to renew any permit or
12 certificate issued by the Board, or may censure the holder of any such permit or certificate
13 for unprofessional conduct, which includes, but is not limited to:

14 (f) willful violation of this chapter or any rule or regulation
15 promulgated by the board under the authority granted under this chapter.

16 (i) Knowing preparation, publication or dissemination of false,
17 fraudulent, or materially misleading financial statements, reports, or information.

18 6. Pursuant to section 118(b) of the Code, the suspension, expiration, or
19 forfeiture by operation of law of a license issued by the Board shall not, during any period
20 within which it may be renewed, restored, reissued or reinstated, deprive the Board of its
21 authority to institute or continue a disciplinary proceeding against the licensee upon any
22 ground provided by law or to enter an order suspending or revoking the licensee on any such
23 ground.

24 7. Section 5070.6 of the Code provides that an expired permit may be
25 renewed at any time within five years after its expiration upon compliance with certain
26 requirements.

27 8. Section 5050 of the Code provides that no person shall engage in the

1 practice of public accountancy in this state unless such person is the holder of a valid permit
2 to practice public accountancy issued by the Board.

3 9. Section 5051 of the Code provides that a person is engaged in the practice
4 of public accountancy if he or she does any of the following:

5 (a) holds himself or herself out to the public in any manner as one
6 skilled in the knowledge, science and practice of accounting, and as qualified and ready to
7 render professional services therein as a public accountant for compensation.

8 (b) Maintains an office for the transaction of business as a public
9 accountant.

10 (c) Offers to prospective clients to perform for compensation, or who
11 does perform on behalf of clients for compensation, professional services that involve or
12 require an audit, examination, verification, investigation, certification, presentation, or
13 review, of financial transactions and accounting records.

14 (d) Prepares or certifies for clients reports on audits or examinations of
15 books or records of account, balance sheets, and other financial, accounting and related
16 schedules, exhibits, statements, or reports which are to be used for publication or for the
17 purpose of obtaining credit or for filing with a court of law or with any governmental
18 agency, or for any other purpose.

19 (e) In general or as an incident to that work, renders professional
20 services to clients for compensation in any or all matters relating to accounting procedure
21 and to the recording, presentation, or certification of financial information or data.

22 (f) Keeps books, makes trial balances, or prepares statements, make
23 audits, or prepares reports, all as a part of bookkeeping operations for clients.

24 10. Section 5055 of the Code provides that only a certified public accountant
25 with a valid permit to practice can use the term "certified public accountant" or the
26 abbreviation "CPA."
27

1 11. Board Rule 66^{2/} provides that an individual practitioner shall not use the
2 plural designation "Certified Public Accountants."

3 12. Board Rule 87 provides that a licensee shall be required, as a condition of
4 active status license renewal, to have at least 80 hours of qualifying continuing education in
5 the two-year period immediately preceding license renewal.

6 13. Board Rule 89 requires that a licensee upon renewal, must provide a
7 written statement, signed under penalty of perjury, certifying completion of the continuing
8 education hours required under Board Rule 87.

9 14. Section 5107 of the Code provides that the executive officer of the Board
10 may request the administrative law judge to direct a respondent found guilty of
11 unprofessional conduct in violation of section 5100(i) to pay to the Board all reasonable costs
12 of investigation and prosecution of the case, including, but not limited to, attorneys' fees.

13 VIOLATIONS OF ACCOUNTANCY ACT AND PROBATION

14 15. Respondent is subject to discipline by the Board for failing to comply with
15 the terms of his probation, which violations are also unprofessional conduct under probation
16 condition number 23, and for unprofessional conduct under Section 5100 and 5100(f) and (i),
17 of the Code by reason of the following acts:

18 A. Respondent failed to submit quarterly reports for the quarters ended
19 March 31, 1995, June 30, 1995, September 30, 1995, December 31, 1995, and March 31,
20 1996, within 10 days of completion of the quarter, as required by condition 16 of his
21 probation which is an act of unprofessional conduct under Section 5100 and probation
22 condition number 23.

23 B. Respondent, after his certificate expired on February 1, 1995,
24 compiled and reported on financial statements, including but not limited to, compiling and
25 reporting on financial statements on or about April 19, 1996 under the name, and on the
26

27 2. The Board's Rules are found in Title 16 California Code of Regulation, with section
numbers corresponding to the Rule numbers listed herein.

1 letterhead of, "Palmer & Company, Certified Public Accountants." This conduct violates
2 probation condition number 12 (obey all laws and Board rules) and number 13 (follow Board
3 Rules in conducting engagements) and is also unprofessional conduct under Section 5100,
4 5100 (f) and (i) and probation condition number 23, in that respondent, by this conduct:

5 (i) engaged in the practice of public accountancy without a valid
6 permit in violation of Section 5050 of the Code;

7 (ii) engaged in the practice of public accountancy without the
8 required 80 hours of continuing education required for license renewal under Board Rule 87.

9 (iii) used the term "Certified Public Accountant" without a valid
10 permit in violation of Section 5055 of the Code;

11 (iv) knowingly prepared, published and disseminated financial
12 statements, reports or information that were false, fraudulent or materially misleading in that
13 they identified as prepared by respondent as "Certified Public Accountants," when he was in
14 fact not licensed to practice public accountancy, in violation of Section 5100 (i) of the Code.

15
16 C. Respondent during the period of his probation practiced as an
17 individual practitioner under the plural designation "Certified Public Accountants" in
18 violation of Board Rule 66 and condition 12 of his probation and which is also unprofessional
19 conduct under Section 5100, 5100 (f) and probation condition number 23.

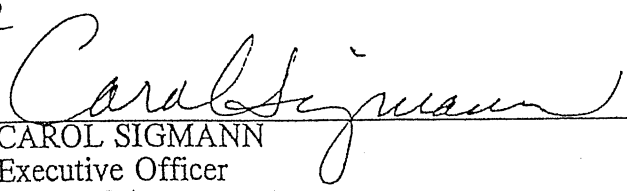
20 PRAYER

21 WHEREFORE, the complainant requests that a hearing be held on the
22 matters herein alleged, and that following said hearing, the Board issue a decision:

- 23 1. Revoking respondents probation.
- 24 2. Revoking Certified Public Accountant certificate Number CPA 34053,
25 heretofore issued to respondent Jeffrey R. Palmer.
- 26 3. Directing Jeffrey R. Palmer to pay to the Board of Accountancy its
27 reasonable cost of investigation and prosecution of this matter as provided in Section 5107.

4. Taking such other and further action as the Board deems proper.

DATED: January 24, 1997


CAROL SIGMANN
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

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